

09-3233
LOCALLY ASSESSED PROPERTY
SIGNED 07-29-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER	INITIAL HEARING ORDER
Petitioner,	Appeal No. 09-3233
v.	Parcel No. #####
BOARD OF EQUALIZATION OF DUCHESNE COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2009
	Judge: Dixon Pignanelli

Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER, Pro Se, by phone

For Respondent: RESPONDENT REP., Deputy Assessor, Duchesne County

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date January 1, 2009 by the Duchesne County Board of Equalization (BOE). The County Assessor set the value at \$\$\$\$\$ and the County BOE sustained the value.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an Initial Hearing was held on April 30, 2010 in the Tax Commission Offices with the Property Owner and Respondent appearing by phone. The Property Owner requested the value be lowered to \$\$\$\$\$ - \$\$\$\$\$. The representative for Respondent (the "County") requested the value set by the County BOE of \$\$\$\$\$ be sustained.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, "In a proceeding before the commission, the burden of proof is on the petitioner . . ."

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS 1, LOT A, SUBDIVISION, CITY, Duchesne County, Utah. It is a 4.97-acre lot improved with cabin. As of the January 1, 2009 lien date the cabin was 100% complete. The improvement is 1½ stories with a 24x40 foundation. The basement is 972 square feet, the main floor is 972 square feet, and the loft is 654 square feet. There is 1,422 square feet above grade, and a total of 2,598 square feet. The improvements have electrical power and a septic system. The topography is slightly sloping with mature trees. The lot is valued at \$\$\$\$\$ with the 0.5 acres holding the improvements valued at \$\$\$\$\$ and the remaining 4.47 acres valued at \$\$\$\$\$. The improvements are valued at \$\$\$\$\$. The Property Owner is contesting the \$\$\$\$\$ placed on the 4.47 acres and the value of the improvements at \$\$\$\$\$.

The Property Owner proffered the following information in support of his request for a reduction in value: (1) The subject property is not on a county road and as such is not accessible during the winter months, (2) the subject property does not have year-round water because it does not receive water from the CITY Water District, but is part of a non-winterized community well system. Well water is pumped into a cistern by a gravity feed pump system. The lack of water limits use of the subject property to the non-freezing months of April through October, (3) the

County's comparable sales with limited water and lack of year-round access had lower values than the other comparable sales, (4) according to a bank loan officer, the market value of a property can be correlated to the amount of time the investment can be enjoyed, (5) the cabins in the SUBDIVISION area cause little impact to the county coffers because there are only (#) completed cabins and they are not year round residences, and (6) although the subject property does have electricity from ELECTRIC COMPANY and is on a septic system, year round access and year round water improves property value.

The Property Owner did not know of any lot sales in the SUBDIVISION where the subject property is located, but provided five sales listings in support of a reduced value. The date on the bottom of the listings indicates the listings were printed off August 8, 2008 and the listings were active. The information from the listings is summarized below:

Listing /Location	Lot size	Price	Year Built Footage (sq ft) # of rooms	utilities comments
# 1 SUBDIVISION 2	None given	\$\$\$\$\$	1974	Reduced price to sell
#2 SUBDIVISION 3 15 miles west of Duchesne, CITY	None given	\$\$\$\$\$	1963 1,649 sq. ft 2 bed, 2 bath	Cistern, septic, power, phone
#3 SUBDIVISION 4 STREET 1	None given	\$\$\$\$\$	1980 1,500 sq ft 2 bed, 1 bath	Cistern, propane generator
#4 CITY SUBDIVISION 5	10 acres	\$\$\$\$\$	None given	Fully furnished
#5 SUBDIVISION 6	2.51 acres	\$\$\$\$\$	2004 1,056 sq ft 2 bed, 1 bath	Electricity, ready to move in

The Deputy Assessor speaking for the County said the value of sales started to soften at the beginning of 2009, but did not start to significantly decline until the very end of 2009. In response to the Property Owner's statements on access to water, the Deputy Assessor said the County gives a flat rate value for stubbed utilities to a lot regardless of the source or year-round access or use. These are \$\$\$\$\$ for power, \$\$\$\$\$ for water, \$\$\$\$\$ for sewer and the entire county is valued this way. The County provided a sales comparative report prepared by the Assessor's Office with three comparable sales. For these comparables the Assessor's Office provided information from their county records on the date of construction and cost basis value of the improvements. The

Assessor's Office then made value adjustments to the comparable sales for square footage of improvements, number of stories, quality of improvements, and location and acreage of the lot to arrive at adjusted sales prices. This information is summarized below:

Comp Address	Sales Date/ Sales Price Adj. Sales Price	Lot size	# of Stories / # of sq feet Year Built
Subject ADDRESS 1 CITY	Assessed value \$\$\$\$\$	4.97 acres	1 ½ stories 1,422 sq. ft.
Comp 1 ADDRESS 2 CITY	April 24, 2007 \$\$\$\$\$ Adj. sales price \$\$\$\$\$	7.58 acres	One story, no basement 1,764 sq. ft. 1998
Comp 2 In the County	Sept. 24, 2007 \$\$\$\$\$ Adj. sales price \$\$\$\$\$	10 acres	One story 1,155 sq. ft. 1997
Comp 3 ADDRESS 3 CITY	June 13, 2008 \$\$\$\$\$ Adj. sales price \$\$\$\$\$	5 acres	1 ½ stories 1400 sq. ft. 960 sq ft garage Cabin – 1981 Garage – 2001

In support of the comparables the Deputy Assessor said Comp 1 had inferior improvements compared to the subject property although Comp 1 had more square footage. Comp 2 also had inferior quality improvements compared to the subject property. Although in a development with year round access, the Deputy Assessor held the improvements in Comp 3 were comparable to the subject property. It is a 5-acre lot with a 1½-story cabin like the subject property. The cabins had almost the same square footage, and both had more angles, dormers, and a metal roof. The Deputy Assessor said it was difficult to find sales comparables, and although the comparables were not in the same area, she held they were comparable and fair representation of market value.

In seeking a value lower than that established by the County BOE, the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE at the BOE hearing has the presumption of correctness at a Tax Commission Hearing.

The Property Owner contested the value of the improvements on the subject lot, but did not provide any specific information on the value of the improvements. The Property Owner also contested the value of the unimproved portion of the subject lot but did not provide comparable sales of improved or unimproved lots. In support of a reduced value the Property Owner provided his personal opinion of items that would affect value and provided five sales listings to show the market was declining. The Deputy Assessor who is a certified residential appraiser testified the

value of sales in the County started to soften the beginning of 2009, but did not start to significantly decline until the very end of 2009. The Property Owner's listings were from August 2009, more than seven months after the lien date and not relevant to the lien date of January 1, 2009. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12)).

The County provided three comparable sales. Comps 1 and 2 from 2007 with sales prices of \$\$\$\$ and \$\$\$\$ respectively, and Comp 3 from DATE, six months before the lien date, with a sales prices of \$. The adjusted sales prices for these Comps were Comp 1 at \$, Comp 2 at \$, and Comp 3 at \$. The assessed value of the subject property at \$ falls well within the range of the adjusted sales prices and in fact is well below the value of Comp 3; the County testified the improvements on Comp 3 were similar to the subject property's quality of improvements. The Commission notes the BOE declined to reduce the value of the subject lot holding the improvements were good quality.

At the hearing the County stated the assessed value on the records for the improvements was different. The County record provided at the hearing showed the improvements on the subject property valued at \$; however, the January 1, 2009 tax assessment sent to the Property Owner showed the value of the improvements to be \$. At the hearing the County agreed to stipulate to the value of the improvements being \$, which would have lowered the value of the subject property from \$ to \$. The Property Owner declined.

The Property Owner has provided insufficient evidence to demonstrate error in the value determined by the board of equalization or provided an evidentiary basis to support a lower value; however, during the Tax Commission hearing the County offered to stipulate to the value of the improvements indicated on the county records. The Commission holds the value of the improvements should be lowered to the value on the county records.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds for parcel no: ##### the value of the land is \$ and the value of the improvements is \$, making the total value of the subject property as of the January 1, 2009 lien date \$. The County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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